

Amendment.

Pursuant to 37 CFR 1.136(a), Applicants petition the Assistant Commissioner to extend the time period to file a response to the outstanding Office Action by three (3) months. A check for \$920.00 is enclosed. Should any further fees be required, the Assistant Commissioner is authorized to charge such fees, or credit any overpayment to Deposit Account No. 50-0320.

Applicants respectfully traverse this Requirement for an Election of Species for the following reasons.

With respect to the first argument that the invention does not relate to a single inventive concept, Applicants wish to point out that the IPER issued on December 12, 2000 found otherwise. In view of this, Applicants urge that the claims are directed to a single inventive concept. Further, Applicants note that the compounds of component (A) share a common feature as they are aminotriazinyl herbicides and that the compounds of component (B) belong to specific classes of herbicides. Hence, it is urged that the claims are directed to a single, inventive concept.

Moreover, Applicants urge that the Requirement is improper as it does not demonstrate that searching all the inventions constitute an undue burden to the Office and because it is contrary to public policy.

The MPEP lists two criteria for a proper Restriction Requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.* Since the Requirement does not

indicate that searching would constitute an undue burden, this requirement is not met.

Further, it is respectfully urged that restricting the claims in the manner suggested in the Requirement constitutes an undue burden to Applicants as well as the public and, thus, is against public policy. If followed, the Requirement would require Applicants to file an indeterminable number of patent applications. The cost of prosecuting and maintaining so many patents is unreasonable in view of the fact that the application originally only contains ten claims. In addition, under GATT, the period of exclusivity for any patents, which issue from the divisional application, is greatly reduced. Applicants cannot mitigate against this because the Requirement does not identify the number of inventions present. Similarly, the public is inconvenienced, as they will not know whether or not Applicants will file divisional applications to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

Accordingly, in view of the foregoing, reconsideration and modification of this Restriction Requirement is requested and an early action on the merits is earnestly solicited.

Respectfully submitted,

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